

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALLEN KEE,

Plaintiff,

-against-

THE DETROIT LIONS, INC.; GETTY  
IMAGES (US), INC.; NFL  
PROPERTIES, LLC; NFL  
ENTERPRISES, LLC; FANATICS  
RETAIL GROUP NORTH, LLC; DICK'S  
SPORTING GOODS, INC.; BULLION  
INTERNATIONAL, INC. d/b/a THE  
HIGHLAND MINT; TIMELESS  
CREATIONS, INC.; MCFARLANE  
TOYS, INC.; KEVIN GORDON d/b/a VC  
COLLECTIBLES; and JOHN DOES 1-10,

Defendants.

Case: 1:24-cv-223-ALC

**ANSWER**

Defendant MCFARLANE TOYS, INC. (“Defendant”), by and through its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, hereby answers and responds to the allegations in the First Amended Complaint (DE 50) (“Complaint”) of Plaintiff ALLEN KEE (“Plaintiff”) in the above action as follows:

**ANSWERING “THE PARTIES”**

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and on that basis denies the allegations contained therein.

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, and on that basis denies the allegations contained therein.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint, and on that basis denies the allegations contained therein.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and on that basis denies the allegations contained therein.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint, and on that basis denies the allegations contained therein.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and on that basis denies the allegations contained therein.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and on that basis denies the allegations contained therein.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, and on that basis denies the allegations contained therein.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and on that basis denies the allegations contained therein.

10. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and on that basis denies the

allegations contained therein.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and on that basis denies the allegations contained therein.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and on that basis denies the allegations contained therein.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and on that basis denies the allegations contained therein.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and on that basis denies the allegations contained therein.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and on that basis denies the allegations contained therein.

16. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and on that basis denies the allegations contained therein.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and on that basis denies the allegations contained therein.

18. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 18 of the Complaint, and on that basis denies the allegations contained therein.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and on that basis denies the allegations contained therein.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and on that basis denies the allegations contained therein.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and on that basis denies the allegations contained therein.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint, and on that basis denies the allegations contained therein.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and on that basis denies the allegations contained therein.

24. With respect to the allegations contained in paragraph 24 of the Complaint, Defendant admits that it is a Michigan corporation with a place of business at 1711 W. Greentree Drive, Suite 212, Tempe, AZ 85284. All allegations not expressly admitted are denied.

25. Defendant denies the allegations contained in paragraph 25 of the Complaint.

26. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint, and on that basis denies the

allegations contained therein.

27. With respect to paragraph 27 of the Complaint, Defendant admits that Plaintiff purports to collectively refer to FANATICS, DSG, HIGHLAND MINT, MCFARLANE, and VC COLLECTIBLES as the “RETAIL DEFENDANTS.” All allegations not expressly admitted are denied.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, and on that basis denies the allegations contained therein.

**ANSWERING “JURISDICTION AND VENUE”**

29. With respect to the allegations contained in paragraph 29 of the Complaint, Defendant admits that Plaintiff purports to bring this action for copyright infringement and related claims but denies Plaintiff’s allegations against Defendant. All allegations not expressly admitted are denied.

30. With respect to the allegations contained in paragraph 30 of the Complaint which sets forth conclusions of law, no response is required. To the extent a response is deemed required, Defendant admits that the cited federal statutes confer subject matter jurisdiction, and respectfully refers all questions of law to this Honorable Court. All allegations not expressly admitted are denied.

31. With respect to the allegations contained in paragraph 31 of the Complaint which sets forth conclusions of law, no response is required. To the extent a response is deemed required, Defendant admits that the cited federal statutes relate to venue, and respectfully refers all questions of law to this Honorable Court. All allegations not expressly admitted are denied.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 32 of the Complaint, and on that basis denies the allegations contained therein.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint, and on that basis denies the allegations contained therein.

34. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint, and on that basis denies the allegations contained therein.

35. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint, and on that basis denies the allegations contained therein.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint, and on that basis denies the allegations contained therein.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint, and on that basis denies the allegations contained therein.

38. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint, and on that basis denies the allegations contained therein.

39. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint, and on that basis denies the allegations contained therein.

40. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint, and on that basis denies the allegations contained therein.

41. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint, and on that basis denies the allegations contained therein.

42. Defendant denies the allegations contained in paragraph 42 of the Complaint as phrased.

43. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint, and on that basis denies the allegations contained therein.

44. Defendant denies the allegations contained in paragraph 44 of the Complaint.

#### **ANSWERING “FACTS”**

45. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint, and on that basis denies the allegations contained therein.

46. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint, and on that basis denies the allegations contained therein.

47. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Complaint, and on that basis denies the allegations contained therein.

48. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 48 of the Complaint, and on that basis denies the allegations contained therein.

49. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Complaint, and on that basis denies the allegations contained therein.

50. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint, and on that basis denies the allegations contained therein.

51. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Complaint, and on that basis denies the allegations contained therein.

52. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Complaint, and on that basis denies the allegations contained therein.

53. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Complaint, and on that basis denies the allegations contained therein.

54. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint, and on that basis denies the allegations contained therein.

55. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint, and on that basis denies the allegations contained therein.

56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Complaint, and on that basis denies the allegations contained therein.

57. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the Complaint, and on that basis denies the allegations contained therein.

58. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint, and on that basis denies the allegations contained therein.

59. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Complaint, and on that basis denies the allegations contained therein.

60. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint, and on that basis denies the allegations contained therein.

61. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Complaint, and on that basis denies the allegations contained therein.

62. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint, and on that basis denies the allegations contained therein.

63. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Complaint, and on that basis denies the

allegations contained therein.

64. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Complaint, and on that basis denies the allegations contained therein.

65. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Complaint, and on that basis denies the allegations contained therein.

66. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint, and on that basis denies the allegations contained therein.

67. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Complaint, and on that basis denies the allegations contained therein.

68. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint, and on that basis denies the allegations contained therein.

69. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint, and on that basis denies the allegations contained therein.

70. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Complaint, and on that basis denies the allegations contained therein.

71. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 71 of the Complaint, and on that basis denies the allegations contained therein.

72. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint, and on that basis denies the allegations contained therein.

73. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Complaint, and on that basis denies the allegations contained therein.

74. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint, and on that basis denies the allegations contained therein.

75. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Complaint, and on that basis denies the allegations contained therein.

76. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Complaint, and on that basis denies the allegations contained therein.

77. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the Complaint, and on that basis denies the allegations contained therein.

78. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint, and on that basis denies the allegations contained therein.

79. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint, and on that basis denies the allegations contained therein.

80. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint, and on that basis denies the allegations contained therein.

81. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Complaint, and on that basis denies the allegations contained therein.

82. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint, and on that basis denies the allegations contained therein.

83. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Complaint, and on that basis denies the allegations contained therein.

84. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Complaint, and on that basis denies the allegations contained therein.

85. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint, and on that basis denies the allegations contained therein.

86. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Complaint, and on that basis denies the

allegations contained therein.

87. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Complaint, and on that basis denies the allegations contained therein.

88. With respect to paragraph 88 of the Complaint, no response is required because the paragraph contains no allegations.

89. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Complaint, and on that basis denies the allegations contained therein.

90. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Complaint, and on that basis denies the allegations contained therein.

91. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint, and on that basis denies the allegations contained therein.

92. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Complaint, and on that basis denies the allegations contained therein.

93. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Complaint, and on that basis denies the allegations contained therein.

94. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Complaint, and on that basis denies the

allegations contained therein.

95. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Complaint, and on that basis denies the allegations contained therein.

96. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Complaint, and on that basis denies the allegations contained therein.

97. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Complaint, and on that basis denies the allegations contained therein.

98. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint, and on that basis denies the allegations contained therein.

99. Defendant denies the allegations contained in paragraph 99 of the Complaint.

100. Defendant denies the allegations contained in paragraph 100 of the Complaint.

101. Defendant denies the allegations contained in paragraph 101 of the Complaint.

102. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Complaint, and on that basis denies the allegations contained therein.

103. Defendant denies the allegations contained in paragraph 103 of the Complaint.

104. Defendant denies the allegations contained in paragraph 104 of the Complaint.

105. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Complaint, and on that basis denies the

allegations contained therein.

106. With respect to the allegations contained in paragraph 106 of the Complaint, Defendant denies the allegations with respect to itself, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 106 of the Complaint, and on that basis denies the remaining allegations contained therein. All allegations not expressly admitted are denied.

107. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the Complaint, and on that basis denies the allegations contained therein.

108. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Complaint, and on that basis denies the allegations contained therein.

109. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint, and on that basis denies the allegations contained therein.

110. Defendant denies the allegations contained in paragraph 110 of the Complaint.

111. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111 of the Complaint, and on that basis denies the allegations contained therein.

112. Defendant denies the allegations contained in paragraph 112 of the Complaint.

113. Defendant denies the allegations contained in paragraph 113 of the Complaint.

114. Defendant denies the allegations contained in paragraph 114 of the Complaint.

**ANSWERING “COUNT I – DIRECT, CONTRIBUTORY, and/or VICARIOUS  
COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS”**

115. Defendant repeats and incorporates the answers and allegations set forth at paragraphs 1 through 114 above as if fully set forth herein.

116. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint, and on that basis denies the allegations contained therein.

117. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Complaint, and on that basis denies the allegations contained therein.

118. Defendant denies the allegations contained in paragraph 118 of the Complaint.

119. Defendant denies the allegations contained in paragraph 119 of the Complaint.

120. Defendant denies the allegations contained in paragraph 120 of the Complaint.

121. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Complaint, and on that basis denies the allegations contained therein.

122. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Complaint, and on that basis denies the allegations contained therein.

123. Defendant denies the allegations contained in paragraph 123 of the Complaint.

124. Defendant denies the allegations contained in paragraph 124 of the Complaint.

125. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Complaint, and on that basis denies the

allegations contained therein.

126. Defendant denies the allegations contained in paragraph 126 of the Complaint.

127. Defendant denies the allegations contained in paragraph 127 of the Complaint.

**ANSWERING “COUNT II – BREACH OF CONTRACT (AGAINST THE NFL DEFENDANTS)”**

128. Defendant repeats and incorporates the answers and allegations set forth at paragraphs 1 through 127 above as if fully set forth herein.

129. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 of the Complaint, and on that basis denies the allegations contained therein.

130. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Complaint, and on that basis denies the allegations contained therein.

131. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 of the Complaint, and on that basis denies the allegations contained therein.

132. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 of the Complaint, and on that basis denies the allegations contained therein.

**ANSWERING “COUNT III – VIOLATION OF DMCA § 1202”**

133. Defendant repeats and incorporates the answers and allegations set forth at paragraphs 1 through 132 above as if fully set forth herein.

134. Defendant lacks knowledge or information sufficient to form a belief as to the truth

of the allegations contained in paragraph 134 of the Complaint, and on that basis denies the allegations contained therein.

135. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 of the Complaint, and on that basis denies the allegations contained therein.

136. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 of the Complaint, and on that basis denies the allegations contained therein.

**ANSWERING “COUNT IV – REQUEST FOR DECLARATORY JUDGMENT”**

137. Defendant repeats and incorporates the answers and allegations set forth at paragraphs 1 through 136 above as if fully set forth herein.

138. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 of the Complaint, and on that basis denies the allegations contained therein.

139. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139 of the Complaint, and on that basis denies the allegations contained therein.

140. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 140 of the Complaint, and on that basis denies the allegations contained therein.

141. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 141 of the Complaint, and on that basis denies the allegations contained therein.

142. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 142 of the Complaint, and on that basis denies the allegations contained therein.

**PLAINTIFF'S PRAYER FOR RELIEF**

The Prayer for Relief requires no response. To the extent any response is deemed required, Defendant denies that Plaintiff should be granted any of the relief requested in the set of paragraphs numbered “1” through “4”.

**DEFENSES AND AFFIRMATIVE DEFENSES**

Defendant asserts the following additional defenses to Plaintiff’s claims. The assertion of such defenses, or the designation of a defense as an “affirmative defense,” does not admit that Defendant has the burden of proving the matter asserted.

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief can be granted. In particular, Defendant is not the entity that manufactured or sold the allegedly infringing goods.

**SECOND AFFIRMATIVE DEFENSE  
(Lack of Standing)**

On information and belief, Plaintiff’s claims are barred, in whole or in part, by its lack of standing to assert a claim for copyright infringement due to defect in ownership of the applicable copyright in the particular image or work, and due to an unenforceable copyright registration.

**THIRD AFFIRMATIVE DEFENSE  
(Lack of Registration)**

On information and belief, Plaintiff’s claims are barred, in whole or in part, by the lack of a valid copyright registration for the images or work at issue in this action.

**FOURTH AFFIRMATIVE DEFENSE  
(Innocent Intent)**

Defendant acted at all times with innocent intent, and if Plaintiff's rights have been violated as alleged in the Complaint, which allegations Defendant denies, such violation was entirely innocent, and Defendant did not intentionally, knowingly, recklessly, maliciously or by gross or ordinary negligence participate in any such alleged violation of Plaintiff's rights.

**FIFTH AFFIRMATIVE DEFENSE  
(No Statutory Damages or Attorney's Fees)**

On information and belief, Plaintiff failed to register the images or work alleged in the Complaint prior to the first date of Defendant's alleged infringement, and Plaintiff may therefore not recover statutory damages or attorney's fees for Defendant's alleged infringement of those works.

**SIXTH AFFIRMATIVE DEFENSE  
(No Substantial Similarity)**

The allegedly infringing product is not substantially similar to the photograph-in-suit. Both the photograph-in-suit and the allegedly infringing product both depict a famous athlete and his signature style. When the protectable elements of the works are compared, there is no substantial similarity between the works.

**SEVENTH AFFIRMATIVE DEFENSE  
(Independent Creation)**

The allegedly infringing product is an independent creation, which took no inspiration from the photograph-in-suit. In fact, the allegedly infringing product was first released in 2005—decades before the commissioning of the Barry Sanders statute that Plaintiff alleges infringes on the photograph-in-suit.

**RESERVATION OF RIGHT TO AMEND**

To the extent Defendant may have other separate and/or additional defenses of which it is not aware, Defendant reserves the right to assert them by amendment to this Answer as discovery continues.

**WHEREFORE**, Defendant respectfully requests that the Complaint asserted against it be dismissed in its entirety and all relief requested therein be denied, and that the Court award Defendant such further relief as the Court deems just and proper.

**JURY DEMAND**

Defendant demands a trial by jury of all causes of action as to which the law entitles it to a trial by jury.

Dated: May 10, 2024

Respectfully submitted,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: /s/ Stephen J. Barrett  
Stephen Barrett  
Jura C. Zibas  
150 East 42nd Street  
New York, NY 10017-5639  
Telephone: 212-490-3000  
Facsimile: 212-490-3038  
Email: [stephen.barrett@wilsonelser.com](mailto:stephen.barrett@wilsonelser.com)  
[Jura.zibas@wilsonelser.com](mailto:Jura.zibas@wilsonelser.com)  
Our File No.: 15991.01710

*Counsel for Defendant McFarlane Toys, Inc.*